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A CELEBRATED ILLINOIS CASE THAT MADE HISTORY

Address of Stephen A. Day, delivered before the Illinois State Historical Society at Springfield, Illinois, May 10, 1917.

In one sense, history is but the record of the growth of law. It is by the acts and deeds of men in the past upon which we build the structures of the future. Perhaps in no more enduring form are found these records than in the proceedings of our courts of law. Many adjudicated cases furnish the land-marks along the path of civilization, and in the history of this Nation no more striking example of the power and majesty of this great Democracy is to be found than in a great case which occurred in the State of Illinois a little more than twenty years ago.

In observing historical incidents, we are struck by the force of the climax, and sometimes are not equally conscious of the preceding and predisposing causes that lead up to the climax. We all recall the sorrows and the tragedies of the panic of 1893, when the whole nation was shaken to its foundations by a financial depression and reign of disorder and dissension theretofore unequalled in our annals. Coincident with such crises and springing therefrom, there often are seen the flames of social revolution and rebellion which theretofore were smoldering in the minds of the discontented.

As a part of the great industrial organization of the Pullman Company, a model town was constructed for the employees, with the idea of building up a plant sufficient unto itself, possessing solidarity and cooperation as factors

in its strength. During the panic of 1893, those in charge of the affairs and management of the Pullman Company, because of the general business depression, came to the conclusion that they could not continue to carry on their pay rolls large numbers of employees who had been engaged in the construction of cars. These employees were accordingly laid off, and a general feeling of discontent arose among the workers in this industrial town. The employees demanded an increase in wages and claimed that because the rentals for their homes had not been lowered that the hard times prevailing required an increase in their pay. Those in charge of the Pullman Company refused the demands and insisted that as employers they would not arbitrate the points in dispute. In no way related to this dispute, and in no way affiliated with the wage earners at Pullman there was forming in the Nation an organization known as the American Railway Union, in which the moving spirit was Eugene V. Debs.

Among the strikers at Pullman was a woman of intense magnetism and powers of eloquence, with the gift to inspire her following like that possessed by the Immortal Maid of Orleans. She requested an opportunity to address the members of the Railway Union to secure their aid, by way of a sympathetic strike, so as to render successful the strike of her fellow-workers at Pullman. This opportunity was afforded and the effect of her eloquence was electrical. The result was a demand by the Railway Union upon the General Managers of the railways that they refuse to attach Pullman cars to their regular trains. This demand was promptly refused, and thereupon concerted action was taken under the leadership and management of Debs to incite the members of the Railway Union throughout the United States to refuse to permit the carriage and transportation of Pullman cars. This was the beginning of a nation-wide industrial disorder and violence, and almost immediately open conflicts occurred in almost every city in the Union. What had commenced as a simple industrial dis-

pute involving a single employer and its employees, soon flamed into widespread social rebellion. It developed later that telegrams were sent by Debs and his followers at an expense of over \$500 a day, and this was continued even after an injunction was imposed. The total amount thus expended was admitted to be between \$4,000 and \$6,000 for the telegrams sent between June 26, and July 27, 1894.

The acts of violence and destruction of property in and around Chicago are typical of what occurred in other parts of the United States. There was deliberate wrecking of a train on the Rock Island Railroad at Blue Island, Illinois. In the Chicago Tribune of July 1, 1894, in speaking of this incident, it is said:

"They broke the trains, drove passengers from the Pullmans, ransacked the buffet cars, destroying the provisions therein contained."

The "Diamond Special," a fine passenger train on the Illinois Central Railroad, was wrecked just south of Grand Crossing, the "strikers having removed spikes from rails, so that they spread and threw the engine from the track." About this time in a statement given to the press Debs threatened to call out the employees of the Western Union and Postal Telegraph Companies, as well as all members of the typographical unions, so that the newspapers could not be printed. Whole trains full of passengers were held up for hours, and it is recalled that striking rioters shot at a moving train near Cincinnati, Ohio, with the object of killing a railway official who was on board. Freight cars were overturned on their tracks and general destruction of property became prevalent. Dangerous fires were caused in the stockyards, and at one time it was said that entire Packingtown would be burned up.

So long as the conflict remained private in character, both sides had large numbers of followers and sympathizers among the general public. It is interesting to note that at this time those who favored the side of Debs wore white ribbons in their button-holes, and an appeal was made

similar to that existing during the French Revolution. Later on as the conflagration became more serious and it was seen that the strikers, frenzied by resistance, were getting to a point where the safety of the Nation was involved, those who favored a speedy termination of the trouble with the welfare of the great mass of our citizenship at heart, wore the red, white and blue, in their button-holes. At this point it is well to add that Debs said to Judge Grosscup, who, together with Judge Woods, imposed an injunction against him and his followers, that but for the prompt action of the Federal Court, the United States would have been plunged into a state of disorder and insurrection that would have made the French Revolution seem tame by comparison. This illustrates the fact that violence and incendiarism is fanned into wide-spread conflagration like the wind blowing over a dry prairie. The time to act is when the fire is first lit, and when the means are at hand to prevent its spreading.

When it became apparent that the activities of Debs and the American Railway Union were seriously embarrassing the carrying of the United States mails, and the orderly movement and transportation of interstate commerce, it was decided to have the United States Government intervene to protect its interests and the rights of the public. On July 2, 1894, a bill for an injunction was filed on behalf of the United States by Richard Olney, at that time Attorney General, in the Federal Court at Chicago, praying for an injunction against acts which interfered with the carrying of the United States mails and the orderly movement of interstate commerce. Upon a hearing had before Judges Woods and Grosscup, the injunction order was issued and was given to the marshal to execute. At this time, as recited in the Chicago Tribune of July 2, 1894—

“A small army of deputies has been sworn in by the United States Marshal to enforce the legal action that will be taken by the Government. Large supplies of revolvers were purchased yesterday, and 150 riot guns will be deliv-

ered at the Marshal's office this morning. Deputies in large force are to be sent to the scene of every disturbance, actual or threatened. If they are found unable to cope with any situation that arises, the Marshal instantly will call upon the Government for military reinforcements. The troops at Ft. Sheridan are in readiness to move at a minute's notice. A special train of ten cars stands on the track at the fort ready to bring them into Chicago in half an hour."

When Deputy Allen attempted to read the injunction order to the strikers and cried out, "Let all give attention; we are going to read an order of the United States Court," everybody in the hearing of his voice hooted. Allen read the order distinctly and refused to be howled down. Upon the completion of his reading shouts of "O, rats," and blasphemies were heard, such as "To hell with the United States Court," "Who is the United States Court?" the mob shouted. It was soon evident that the force of deputy marshals, several hundred in number, would not be sufficient to handle the situation. It is said in the press of that time:

"The situation early yesterday morning was critical. Marshal Arnold, United States Attorney Milchrist, Judge Grosscup and Special United States Commissioner Edwin Walker, met at the Government Building, and after a short consultation decided nothing but the presence of the fighting arm of Uncle Sam's Government would compel compliance with the court's order."

Thereupon Judge Grosscup communicated this fact to President Cleveland with the request that troops be immediately sent to quell the disturbance and to enforce the order of the court.

By a strange coincidence, with the dawn of the Fourth of July, 1894, the Fifteenth United States Infantry, two companies of the Seventh Cavalry, and a battery of the First Artillery, arrived in Chicago from Fort Sheridan, to teach Mr. Debs and those of his followers who trampled on the dignity of the United States Court, and scoffed at its

order, assaulted its officers, and otherwise treated it with contempt, that the law of the land was made to be obeyed, and not violated under any conditions.

The situation was growing gradually worse, and was becoming more difficult to handle. To support the injunction proceeding which the Government had instituted, and in any event to put an end to further rioting, Judge Grosscup called a special grand jury and laid before them the question of indicting Debs and his followers as guilty of a conspiracy to violate a law of the United States by interfering with the carrying of its mails and the transportation and movement of interstate commerce, under the federal conspiracy statute. About this time Debs issued a statement in which he said:

"The employees from the beginning have been willing to arbitrate their differences with the company. That is their position today. The company arrogantly declares that there is nothing to arbitrate. If this be true why not allow a board of fair and impartial arbitrators to determine the fact? * * * Let them agree as far as they can, and where they fail to agree let the points in dispute be submitted to arbitration."

On July 8, 1894, a proclamation was issued by President Cleveland calling attention to the seriousness of the situation, the need of protecting the Government against attack and interference, and notifying the people that the federal troops had been called out with a definite object in mind, and that acts of violence must stop at once. As the pressure of the Government was extended Debs sought to incite greater numbers to join his allegiance. In some cases this was successful, but it is significant that many organizations and groups of laborers throughout the country refused to follow him, and went on record in opposition to his requests. It was charged that the strain of events, and the very enormity of the social upheaval had affected Debs's sanity. The fact is that as the strong arm of the federal government became felt an immediate sobering

effect was had upon Debs and his followers, and they were counselled to refrain from violence and open disorder.

After the passage of time when we have become accustomed to the exercise of authority, we sometimes are forgetful of the fact that every precedent was forged from raw material. The Government of the United States had never before been put to such a test of asserting its rights and insuring respect for them. Not since the Civil War had the executive been called upon to uphold the supremacy of the national Government and the supreme law of the land. The real party involved in the celebrated case to which I refer was the Nation itself, and the test of its strength was at hand. An interesting instance in this connection, and of considerable historical value, is that upon receipt of the telegram from Judge Grosscup, President Cleveland sent for his Secretary of State, Mr. Gresham, and his Attorney General, Mr. Olney, and the request for federal troops was discussed. It is characteristic of President Cleveland that he said: "Send the troops at once; we can discuss the legal questions later on." It is also of great importance that in this critical event politics played no part. The judge of the Federal Court was a staunch Republican, and the President a staunch Democrat, but both were patriots first. Governor Altgeld of Illinois did not approve of the action of the President in sending federal troops to maintain law and order, and severely criticized the action of President Cleveland in this regard. In response to Governor Altgeld's objections, President Cleveland insisted upon the right of the Federal Government to protect its rights and property at all times, and that it was sufficient unto itself to obtain obedience and respect for its orders and decrees. The communications passed between Governor Altgeld and the President clearly display the determination of the President to do something promptly and effectively and to leave discussion to follow after the law had been vindicated. This in itself furnishes a beautiful

example of the true executive mind which is blessed with a facility to act, not to vacillate and hesitate.

When the special grand jury assembled, after referring to the fact that the jurors were about to discharge a great public duty, Judge Grosscup in his charge to them, laying the corner stone of what has since become the magnificent citadel of our national solidarity and splendid strength, used the following words:

"You have been summoned here to inquire whether any of the laws of the United States within this judicial district have been violated. You have come in an atmosphere and amid occurrences that may well cause reasonable men to question whether the government and laws of the United States are yet supreme. Thanks to resolute manhood and to that enlightened intelligence which perceives the necessity of vindication of law before any other adjustments are possible, the Government of the United States is supreme. You doubtless feel as I do, that the opportunities of life, in the present conditions, are not perhaps entirely equal, and that changes are needed to forestall some of the tendencies of current industrial life; but neither the torch of the incendiary, nor the weapon of the insurrectionist, nor the inflamed tongue of him who incites to fire and the sword, is the instrument to bring about reforms. To the mind of the American people, to the calm, dispassionate, sympathetic judgment of a race that is not afraid to face deep changes and responsibilities, there has as yet been no adequate appeal. Men who appear as the advocates of great changes, must first submit them to discussion, discussion that reaches not simply the parties interested, but the wider circle of society, and must be patient as well as persevering until the public intelligence has been reached and the public judgment made up. An appeal to force before that hour is crime, not only against the government of existing laws, but against the cause itself: for what man of any intelligence supposes that any settlement will abide

which is induced under the light of the torch or the shadow of an overpowering authority?

With the questions behind present occurrences, therefore, we have, as ministers of the law and citizens of the Republic, nothing now to do. The law as it is must first be vindicated before we turn aside to inquire how the law or practice as it ought to be can be effectually brought about. Government of law is in peril and that issue is paramount."

After defining insurrection against the United States and the unlawfulness of interfering with the carrying of the United States mails and the orderly transportation of interstate commerce, Judge Grosscup said:

"When men gather to resist the civil or political power of the United States, or to oppose the execution of its laws and are in such force that the civil authorities are inadequate to put them down, and a considerable military force is needed to accomplish that result, they become insurgents, and every person who knowingly incites, aids or abets them, no matter what his motive may be, is likewise an insurgent. This penalty is severe, and as I have said, is designed to protect the Government and its authority against direct attack."

Judge Grosscup in the course of his charge has this to say with reference to the industrial relations of employer and employees:

"I recognize, however, the right of labor to organize. Each man in America is a freeman, and so long as he does not interfere with the rights of others has the right to do with that which is his what he pleases. In the highest sense a man's arm is his own, and aside from contract relations no one but himself can direct when it shall be raised to work or dropped to rest. The individual option to work or to quit is the imperishable right of a freeman, but the raising or dropping of the arm is the result of a will that resides in the brain and, much as we desire that such will remain entirely independent, there is no mandate of law which prevents their association with others or their re-

sponsibility to a higher will. The individual may feel himself alone unequal to cope with the conditions that confront him, or unable to confront the myriad of considerations which ought to control his conduct. He is entitled to the highest wage that the strategy of work or cessation of work may bring, and the limitations upon intelligence and opportunities may be such that he does not choose to stand upon his own perception of the strategic or other conditions. His right to choose a leader, one who serves, thinks and wills for him a brain skilled to observe his necessity, is no greater pretension than that which is recognized in every other department of industry. So far and within reasonable limits associations of this character are not only not unlawful, but are in my judgment beneficial when they do not restrain individual liberty, and are under enlightened and conscientious leadership. But they are subject to the same laws as other associations. * * * No man in his individual right can lawfully demand and insist upon conduct by others which will lead to injury to a third person's lawful rights. The railroads carrying the mails and interstate commerce have a right to the services of each of their employees and until each lawfully chooses to quit, and any concerted action upon the part of others to demand or insist under effective penalty or threat upon their quitting, to the injury of the mail service or the prompt transportation of interstate commerce, is a conspiracy unless such demand or insistence is in pursuance of a lawful authority conferred upon them by the men themselves, and is made in good faith in execution of such authority.

A demand and insistence under effective penalty or threat, injury to the transportation of the mails or interstate commerce being proven, the burden falls upon those making the demand or insistence to show lawful authority and good faith.

Let me illustrate: Twelve carpenters are building a house. Aside from contract relations each can quit at leisure. A thirteenth and a fourteenth man, strangers to

them, by concerted threats of holding them up to public odium or private malice, induced them to quit and leave the house unfinished. The latter in no sense represented the former or their wishes, but are simply interlopers for mischief and guilty of conspiracy against the employer of the carpenters; but if upon trial for such results the thirteenth and fourteenth men prove that instead of being strangers they are trustees, agents, or leaders of the twelve, with full power to determine for them whether their wage is such that they ought to continue or to quit, and that they have in good faith determined that question, they are not then, so far as the law goes, conspirators; but if it should further appear that the supposed threat was not used in the interest of the twelve men to further a personal ambition or malice of the two it would not entirely justify their conduct. Doing a thing under cloak of authority is not doing it with threat. The injury of the two to the employer in such an instance would only be aggravated by their treachery to the associated twelve, and both employer and employee should with equal insistence ask for the visitation of the law.

If it appears to you, therefore, applying the illustration to the occurrences that will be brought to your attention, that any two or more persons; by concerted insistence or demand under effective penalties and threats upon men quitting the employment of the railroads to the obstruction of mails or interstate commerce, you may inquire whether they did these acts as strangers to these men advised to quit, or whether they did them under the guise of trustees or leaders of an association to which these men belong; and if the latter appears you may inquire whether their acts and conduct in that respect were in good faith and in conscientious execution of their supposed authority, or were simply the use of that authority as a guise to advance personal ambition or satisfy pride or malice. There is honest leadership among these, our laboring fellow-citizens, and there is doubtless dishonest leadership. You should not

brand any act of leadership as dishonest or in bad faith until it clearly so appears; but if it does so appear, if any person is shown to have betrayed that trust and his acts fall within the definition of crime, as I have given it to you, it is alike the interest and pleasure and a duty of every citizen to bring him to swift and heavy punishment.

I wish again in conclusion to impress upon you the fact that the present emergency is to vindicate law. If no one has violated the law under the rules I have laid down it needs no vindication; but if there has been such violation there should be quick, prompt, and adequate indictment—I confess that the problems which were made the occasion or pretext for our present disturbances have not received perhaps the consideration they deserve. It is our duty as citizens to take that up and by candid and courageous discussion to ascertain what wrongs exist and what remedies can be applied. But neither the existence of such problems nor the neglect of the public hitherto to adequately consider them justifies the violation of law or the bringing on of general lawlessness. Let us first restore business and punish the offenders of law, and then the atmosphere will be clear to think over the claims of those who have real grievances. First vindicate the law. Until that is done no other question is in order.”

The grand jury returned an indictment against Debs and others because of his activities in impeding the carrying of the United States mails.

The injunction suit against Debs and the Railway Union became the case of *in re* Debs, decided by the Supreme Court of the United States, when an attempt by the writ of habeas corpus was used to free Debs from the restraint imposed by the Illinois Federal Court. This celebrated decision, written by Justice Brewer, has settled for all time the question of the sufficiency of our national Government to deal with attacks made against it and to

compel an observance of its orders and respect for its authority. Therein it is said in part:

“But there is no such impotency in the national Government. The entire strength of the nation may be used to enforce in any part of the land the full and free exercise of all national powers and the security of all rights entrusted by the Constitution to its care. The strong arm of the national government may be put forth to brush away all obstructions to the freedom of interstate commerce or the transportation of the mails. If the emergency arises, the army of the nation, and all its militia, are at the service of the nation to compel obedience to its laws.

“But passing to the second question, is there no other alternative than the use of force on the part of the executive authorities whenever obstructions arise to the freedom of interstate commerce or the transportation of the mails? Is the army the only instrument by which rights of the public can be enforce and the peace of the nation preserved? Grant that any public nuisance may be forcibly abated either at the instance of the authorities, or by any individual suffering private damage therefrom, the existence of this right of forcible abatement is not inconsistent with nor does it destroy the right of appeal in an orderly way to the courts for a judicial determination, and an exercise of their powers by a writ of injunction and otherwise to accomplish the same result. * * *

“Every government, entrusted by the very terms of its being with powers and duties to be exercised and discharged for the general welfare, has a right to apply to its own courts for any proper assistance in the exercise of the one and the discharge of the other, and it is no sufficient answer to its appeal to one of those courts that it has no pecuniary interest in the matter. The obligations which it is under to promote the interest of all and to prevent the wrong doing of one resulting in injury to the general welfare is often of itself sufficient to give it a standing in court. * * *

"It is obvious from these decisions that while it is not the province of the government to interfere in the mere matter of private controversy between individuals, or to use its great powers to enforce the rights of one against another, yet whenever the wrongs complained of are such as affect the public at large, and are in respect of matters which by the Constitution are entrusted to the care of the nation, and concerning which the nation owes the duty to all the citizens of securing to them their common rights, then the mere fact that the government has no pecuniary interest in the controversy is not sufficient to exclude it from the courts, or prevent it from taking measures therein to fully discharge those constitutional duties.

"The national government, given by the Constitution power to regulate interstate commerce, has by express statute assumed jurisdiction over such commerce when carried upon railroads. It is charged, therefore, with the duty of keeping those highways of interstate commerce free from obstruction, for it has always been recognized as one of the powers and duties of a government to remove obstructions from the highways under its control."

It is interesting to know that the decision of the Supreme Court of the United States in the recent so-called Adamson Bill case (*Wilson vs. New et al.*) is founded upon *in re Debs*, from which I have just quoted; and the opinion of the Chief Justice once more exalts the supremacy of national power and assures us of a federal government adequate to compel obedience to lawful authority and the orderly transportation and interchange of commerce between the states.

The great war, in which the United States has joined, is for the triumph of democracy and the complete defeat of autocracy and empire. When this war comes to an end, a peace with victory, even the casual observer can see that there will be no chance to question the quality, the genuineness of the freedom that will be granted. All over the world, the people will demand and will obtain a true meas-

ure of the free exercise of human rights. There will be no patience shown to those who argue for anything less than the fullest and most complete distribution of democratic privileges and immunities. As a part of this adjustment to the new order, will come the need for the settlement of industrial disputes by an orderly method, some form of cooperative courts of arbitral justice, or there will be the most violent and sanguinary disorders that have ever occurred. We must prepare to meet this need—it is the most important problem that faces this nation, in the time of war or in time of peace.

Organized efforts, powerful and far-reaching are always at work to undermine the judicial power of our courts. The power to issue injunctions in labor disputes is challenged and denied. Under pressure of force and a weak subserviency to political advantage, we are apt to yield and approve modifications of our judicial system and the power of our courts. With all the strength at my command, with all my devotion to this great republican government, I ask that we stand steady in the faith, true and courageous in our unalterable determination to see that the courts of this land be kept forever strong and sufficient, honest, fearless and above suspicion. The dispensation of justice is the highest quality in the human breast and the courage to uphold the law against any attack is the most sublime of any in the world. If the power of our courts in injunction cases is ever weakened, the end of the republic is in sight. No military force could keep it together. We would be dismembered in internecine struggle and rebellion. Let us stand forever loyal to our institutions of free government, unafraid to uphold our liberty according to law, to quell riot and disturbance, to live as neighbors and friends under the reign of law and order, to exalt justice and the worship of Christian ideals for the preservation of our freedom regulated by law.

To all of us who love liberty and the pursuit of happiness, I wish to emphasize the need of insisting, at any cost,

that the power of our courts to issue injunctions be never weakened. It is the strong arm of a court of equity, ready to restrain the employer when he acts against the welfare of his employees, and to restrain the employees in acts unjust and injurious to the welfare of the employer. Above all, it is the final means of keeping us safe from violence and to protect the great mass of our citizenship that is not directly involved in the dispute. It is the power to protect life and property from unjust attack, no matter from whence it comes. It is the means of bringing the decrees of justice to the point of common obedience—the means whereby the government may compel its right to endure and go forward with respect. Those who challenge the power of our courts challenge the very life of the Government, for the court is but the hand that protects the life of the commonwealth.

Illinois, proud State of the prairies and great rivers, has given to the nation much that has made us glad to rejoice in the blessings of our freedom. When we think of the majesty of Lincoln, the iron courage of Grant, it is fitting to recall that the first real test of liberty according to law was worked out in this splendid State, and the timely courage of the firm, stubborn and unflinching Cleveland, responding to the call of our own Federal Court, enabled us to show to the world that a democracy based upon self-denial and mutual forbearance is yet strong enough to stand for its life and to compel respect for its authority.